

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AVANTI ENTERPRISES, INC.,

Plaintiff,

-against-

A&T PRODUCE, INC., ENVER SABANOVIC, and
TAIP SABANOVIC

Defendants.

ORDER

09-CV-1185 (NGG) (SMG)

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NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiff Avanti Enterprises, Inc. (“Avanti”) brings an action under the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. §§ 499a – 499t, against A&T Produce, Inc. (“A&T”), and Enver Sabanovic and Taip Sabanovic (collectively, “Defendants”), alleged to be principal officers of A&T. (Complaint (Docket Entry # 1).) Avanti seeks damages for A&T’s alleged failure to pay for a shipment of produce. (Id.) On August 12, 2009, Avanti moved for a default judgment against Defendants. (Docket Entry # 7.) On November 9, 2009, the Clerk of the Court entered a default against Defendants. (Docket Entry # 8.) On December 21, 2009, the court referred the matter to Magistrate Judge Steven M. Gold for a damages inquest. (Docket Entry # 9.) On July 21, 2010, Judge Gold recommended that the court deny Avanti’s Motion for Default Judgment because Avanti effected improper service on A&T, and because the Complaint fails to sufficiently plead a cause of action under PACA against the individual Defendants. (“R&R” (Docket Entry # 16.) Judge Gold further recommended that Avanti be allowed leave to file an amended complaint addressing the concerns outlined in his R&R, and properly serve the amended complaint on Defendants.

No party has objected to Judge Carter's R&R, and the time for doing so has passed. See Fed. R. Civ. P. 72(b)(2). Having reviewed Judge Gold's thoroughly reasoned R&R, the court adopts it in its entirety. See, e.g., Brown v. Ebert, No. 05-CV-5579 (DLC), 2006 U.S. Dist. LEXIS 94265, at *6 (S.D.N.Y. Dec. 29, 2006) (where no party objects to a magistrate judge's report and recommendation, review is for "clear error"). Accordingly, the court DENIES Avanti's Motion for Default Judgment. The court also grants Avanti leave to file an amended complaint by Friday, October 22, 2010.

SO ORDERED.

Dated: Brooklyn, New York
September 30, 2010

/s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge